



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Workers Compensation

TITLE-SERIES: 85-17

RULE TYPE: Legislative Exempt Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: ELECTRONIC SUBMITTAL OF INVOICES AND
RECEIPT OF PAYMENTS

CITE STATUTORY AUTHORITY: §§23-1-1(e), 23-2C-5(c)(2) and 23-3-5.

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 05/20/2021 1:00 PM

LOCATION OF PUBLIC HEARING:

Offices of the Insurance Commissioner, 900 Pennsylvania Ave., Charleston, WV 25302

DATE WRITTEN COMMENT PERIOD ENDS: 05/10/2021 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Erin K. Hunter

ADDRESS: 900 Pennsylvania Ave, 9th Floor

EMAIL: erin.k.hunter@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The purpose of the rule is to implement the provisions of W. Va. Code §23-3-5 and to establish a program to require acceptance of disbursements by electronic transfer from the State Administered Workers' Compensation Funds to vendors and claimants.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule provides for definitions of certain entities association with receiving payments from the State Administered Workers' Compensation Funds, provides a program for electronic payments from those funds to both vendors and claimants, provides for exemptions to the requirement for electronic payments, and provides the ability for private carriers and self-insured employers to also set up programs for electronic payments to claimants and vendors or providers.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule update should not have an economic impact on the Insurance Commissioner. However, the State Auditor's Office has advised that it should provide a significant costs savings to their office as electronic payments to vendors and claimants is more secure, efficient and cost-effective for the State Auditor and State Treasurer.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None know.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

There should be no economic impact on the residents of the state as the payment amounts to claimants and vendors will not change, only the manner in which some payments are made. As noted, the State Auditor's Office has advised that it should provide a significant costs savings to their office as electronic payments to vendors and claimants is more secure, efficient and cost-effective for the State Auditor and State Treasurer.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No fiscal impact to the Insurance Commissioner.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION RULES OF THE
~~WEST VIRGINIA~~ INSURANCE COMMISSIONER

SERIES 17
ELECTRONIC SUBMITTAL OF INVOICES AND
RECEIPT OF PAYMENTS

§85-17-1. General.

1.1. Scope. -- ~~These exempt legislative rules implement the provisions of W. Va. Code §23-3-5 regarding the submission of vendor bills by electronic means and the receipt of payments by vendors from the workers' compensation commission by electronic means. This exempt legislative rule establishes a program to require acceptance of disbursements by electronic transfer from the State Administered Workers' Compensation Funds to vendors and claimants, pursuant to the provisions of W. Va. Code §23-3-5.~~

1.2. Authority. -- W. Va. Code ~~§§23-1-1a(j)(3)~~ §23-1-1(c), 23-2C-5, 23-2C-8 and 23-3-5. Pursuant to W. Va. Code ~~§23-1-1a(j)(3)~~ §23-2C-5(c)(2), rules adopted by the ~~board of managers~~ Workers' Compensation Industrial Council are not subject to legislative approval as would otherwise be required under W. Va. Code §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- ~~August 31, 2005.~~

1.4. Effective Date. -- ~~October 1, 2005.~~

§85-17-2. Purpose of These Rules ~~This Rule.~~

2.1. The purpose of this rule is to implement the provisions of W. Va. Code §23-3-5 ~~regarding the submission of vendor bills by electronic means and the receipt of payments by vendors from the workers' compensation commission by electronic means and to establish a program to require acceptance of disbursements by electronic transfer from the State Administered Workers' Compensation Funds to vendors and claimants.~~

§85-17-3. Definitions.

As used in ~~these rules~~ this rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Act" means ~~the workers' compensation laws of the state of West Virginia which are codified at W. Va. Code §23 et seq.~~

3.2. "ASAP" means ~~that software program known as "Accelerated Submission and Processing System."~~

3.3. "Code" means ~~the Code of West Virginia of 1931, as amended.~~

3.4. "Board" means ~~the workers' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.~~

3.5. "Current fiscal year" means ~~the fiscal year existing at the time a new invoice is to be submitted~~

by a vendor. A fiscal year runs from the first day of July to the thirtieth day of the following June.

~~3.6. “Commission” means the workers’ compensation commission created pursuant to the provisions of W. Va. Code §23-1-1.~~

~~3.7. “Executive director” means the executive director of the workers’ compensation commission, who serves as the chief operating officer of the daily operations of the workers’ compensation commission as provided by W. Va. Code §23-1-4.~~

3.1. “Claimant” means an employee of an employer subject to Chapter 23 of the West Virginia Code who has sustained or received a personal injury in the course of and resulting from his or her covered employment, or in the case of death, an employee’s dependents, if any, and who makes a timely application for compensation or benefits.

3.2. “State Administered Workers’ Compensation Funds” means the “Old Fund,” “Uninsured Employer Fund,” both of which are successor funds to the Workers’ Compensation Fund created pursuant to W.Va. Code §23-3-1, the “Self-Insured Employer Guaranty Risk Pool,” and the “Self-Insured Employer Security Risk Pool,” all created pursuant to W.Va. Code §23-2C-6, and further includes the “Coal-Workers’ Pneumoconiosis Fund,” created pursuant to W.Va. Code §23-4B-2. The State Treasurer is the custodian of the State Administered Workers’ Compensation Funds, and each individual fund is a separate and distinct fund upon the books and records of the State Auditor and State Treasurer. Disbursements from the State Administered Workers’ Compensation Funds are made upon requisition from the Insurance Commissioner to those entitled to receive benefits from the funds.

~~3.8.~~ 3.3. An “invoice” is any legal demand, whether written, oral, or by computer generated medium, for the payment by the ~~workers’ compensation~~ Insurance Commissioner to a vendor.

~~3.9.~~ 3.4. “Vendor” means any health care provider or other entity who performs a service or provides a thing of value to a claimant ~~for workers’ compensation benefits~~ or who performs a service or provides a thing of value to the Insurance Commissioner in relation to the Insurance Commissioner’s responsibilities in regard to the State Administered Workers’ Compensation Funds or who performs a service or provides a thing of value to the Insurance Commissioner’s third-party administrators in relation to their responsibilities in regard to the State Administered Workers’ Compensation Funds, and who then submits an invoice or otherwise seeks payment from the ~~workers’ compensation commission~~ Insurance Commissioner or the Insurance Commissioner’s third-party administrators for the rendering of that service or thing of value. ~~Under no circumstances is a claimant for workers’ compensation benefits to be deemed a vendor under these rules. Unless a self-insured employer elects to take the option provided for in section 6.1 of this rule, the term “vendor” does not include an entity which is submitting invoices or other demands for payment directly to a self-insured employer. In addition, the executive director may, on a case-by-case basis, exclude certain entities from the definition of this subsection.~~

~~3.10.~~ 3.5. “Insurance Commissioner” means the Insurance Commissioner of West Virginia as provided in section one, article two, chapter thirty-three of the West Virginia Code.

~~3.11.~~ 3.6. “Private Carrier” means any insurer, ~~including the successor to the Commission,~~ authorized by the Insurance Commissioner to provide workers’ compensation insurance pursuant to ~~chapters twenty-three~~ Chapters 23 and ~~thirty-three~~ 33 of the West Virginia Code, but shall not include self-insured employers.

~~3.12.~~ 3.7. “Self-insurer” and “Self-insured employer” ~~mean~~ means an ~~employers~~ employer who are ~~eligible and have~~ has been granted self-insured status under the provisions of W. Va. Code §23-2-9.

~~§85-17-4. Electronic Submission of Invoices.~~

~~4.1. Any vendor who, in the previous fiscal year, submitted in excess of one hundred (100) invoices totaling in excess of ten thousand (\$10,000.00) dollars to the workers' compensation commission Insurance Commissioner shall, in the current fiscal year, submit all invoices to the workers' compensation commission Insurance Commissioner by electronic means.~~

~~4.1.1. For example, a vendor submitting 110 invoices which total \$25,000.00 would be required to submit invoices by electronic means.~~

~~4.1.2. For example, a vendor submitting 90 invoices which total \$25,000.00 would not be required to submit invoices by electronic means.~~

~~4.1.3. For example, a vendor submitting 110 invoices which total \$9,000.00 would not be required to submit invoices by electronic means.~~

~~4.2. The electronic means required to be used on the effective date of this rule is the software program designated "ASAP." The executive director shall notify each vendor meeting the requirements of subsection 4.1 of these rules that the vendor must submit all future invoices by use of the ASAP software and shall provide a copy of that software to the vendor without charge.~~

~~4.3. The vendor shall be responsible for acquiring the necessary computer system, other software, and telephone lines by which the ASAP program will be utilized. The workers' compensation commission shall not be responsible nor liable for the costs of acquiring or maintaining the necessary computer system, other software, or telephone lines.~~

~~4.4. In the event that the executive director wishes to change the software program from ASAP to some other software program, such change shall first be reviewed and approved by the board of managers.~~

~~4.5. Any vendor, who is required by subsection 3.1 4.1 of these rules, to submit invoices by use of the ASAP software program and who does not do so shall not receive payment upon that invoice and such invoice shall be immediately rejected and returned to the vendor. Upon proper resubmittal of the invoice by use of the ASAP software program, the vendor shall then be entitled to such payment as may be proper under the rules of the commission.~~

~~§85-17-5~~ §85-17-4. Payment by Electronic Means Electronic Payment to Vendors.

~~5.1. 4.1. Any vendor who, in the previous fiscal year, submitted in excess of one hundred (100) invoices totaling in excess of ten thousand (\$10,000.00) dollars on or after August 1, 2021, submits an invoice for payment from one of the State Administered Workers' Compensation Funds to the workers' compensation commission Insurance Commissioner, or the Insurance Commissioner's third-party administrator, shall, in the current fiscal year, may be required to receive payment from the workers' compensation commission by electronic means if required to do so by the Insurance Commissioner, State Auditor and/or State Treasurer.~~

~~5.1.1. For example, a vendor submitting 110 invoices which total \$25,000.00 would be required to receive payment by electronic means.~~

~~5.1.2. For example, a vendor submitting 90 invoices which total \$25,000.00 would not be required to receive payment by electronic means.~~

~~5.1.3. For example, a vendor submitting 110 invoices which total \$9,000.00 would not be required to receive payment by electronic means.~~

~~5.2. 4.2. Any vendor who meets the requirements of subsection 5.1 of these rules and who wishes to receive payment from one of the workers' compensation commission State Administered Workers' Compensation Funds shall, provide the commission with the name and address of its bank and an appropriate account number or other designation to which the commission may direct the state auditor's office to render appropriate payments if required by the Insurance Commissioner, State Auditor and/or State Treasurer, register with the State Auditor's Office to receive payment through the state's Electronic Funds Transfer (EFT) payment system, through a state purchasing card (P-Card) or through any other electronic means deemed acceptable. The vendor shall provide such additional information as the Insurance Commissioner, State Auditor and/or State Treasurer may require in order to effectuate the payments.~~

~~5.3. 4.3. Any vendor who is required by subsection 5.1 of these rules to receive payments by electronic means and who does not provide the necessary information in order that payments may be made electronically or who fails to otherwise cooperate with the requirements of the commission Insurance Commissioner, State Treasurer or the State Auditor to make accept payments by electronic means shall may not receive payment on any submitted invoice until such information is provided or cooperation is obtained. The Insurance Commissioner, State Auditor and/or State Treasurer may cease issuing paper checks to vendors seeking payment from the State Administered Workers' Compensation Funds after August 1, 2021.~~

~~§85-17-6~~ §85-17-5. Reserved Electronic Payments to Claimants.

5.1. Any claimant receiving payment from a State Administered Workers' Compensation Fund must, on or before August 1, 2021, register to receive a direct deposit payment through the state's Electronic Funds Transfer (EFT) payment system. This includes payments for permanent total disability benefits, permanent partial disability benefits, temporary total disability benefits and/or dependent's benefits.

5.2. Claimants may register to receive direct deposit payments through the state's Electronic Funds Transfer (EFT) payment system by requesting a direct deposit form from the Third-Party Administer assigned to their claim or by contacting the Claims Services Division of the Offices of the Insurance Commissioner for assistance.

5.3. Claimants who do not register to receive direct deposit payments through the state's Electronic Funds Transfer (EFT) payment system by completing a direct deposit form on or before August 1, 2021, may be automatically enrolled by the State Auditor in the West Virginia Paycard Program and may receive a prepaid card in lieu of a paper check or direct deposit. The prepaid card will automatically be reloaded with the claimant's workers' compensation benefit payment every month, or twice a month, in accordance with the appropriate benefit payment schedule.

5.4. The Insurance Commissioner, State Auditor and/or State Treasurer may cease issuing paper checks to claimants for benefits paid from the State Administered Workers' Compensation Funds after August 1, 2021.

~~§85-17-7~~ §85-17-6. Exemptions.

Any vendor or claimant who believes that the imposition of the requirements of all or part of this rule will cause an undue a severe economic hardship or other extreme burden upon that vendor or claimant may file a written petition with the ~~executive director~~ Insurance Commissioner requesting an exemption from all or part of the requirements of this rule. ~~Such written petition shall state in detail the nature of the~~

~~asserted burden and the consequences to the vendor should the vendor not be exempted. The executive director shall then issue a decision on the petition which decision shall be subject to appeal pursuant to the provisions of 85 CSR 7, "Rules for Selected Hearings." Exemptions are generally discouraged, not guaranteed and shall only be granted at the discretion of the Insurance Commissioner, State Auditor and/or State Treasurer, whichever applicable.~~

~~§85-17-8~~ **§85-17-7. Termination of the Commission Private Carriers and Self-Insured Employers.**

~~Upon termination of the commission, this rule shall be administered by the insurance commissioner for the purpose of the submission of vendor bills by electronic means to the administrator of the Old Fund and the receipt of payments by vendors from the Insurance Commissioner or its agent by electronic means. This rule shall have no force and effect over the collections or disbursements or other matters private carriers and self-insured employers. However, a private carrier or self-insured employer may establish its own program regarding payment of workers' compensation benefits to claimants or payments of invoices to vendors by electronic means. Nothing herein shall permit any private carrier or self-insured employer to pay a claimant less than the required benefit rate set by statute or pay a provider less than the amount established by the Insurance Commissioner's fee schedule or the rate negotiated pursuant to a preferred provider, managed care, or other medical cost containment relationship with providers of medical, hospital, or other health care as permitted by W.Va. Code § 23-4-3, if applicable.~~

~~§85-17-9. Severability.~~

~~If any provision of these rules this rule or the application thereof to any person, party, or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the other provisions or application of these rules, and to this end the provisions of these rules are declared to be severable.~~